

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE

600 New London Avenue
Cranston, Rhode Island 02920
(401) 462-2132/Fax# (401) 462-0458
TDD# (401) 462-3363

Docket #14-2454
Hearing Date: March 3, 2015

Date: May 19, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided. During the course of the proceeding, the following issue(s) and agency policy reference(s) were the matters before the hearing:

**THE DHS POLICY MANUAL: MEDICAL ASSISTANCE
SECTION: 0384.15 RESOURCE TRANSFERS, SECTION: 0384.25.05
CALCULATION OF PENALTY PERIOD, SECTION: 0384.35
EXCEPTIONS TO PERIOD OF INEL. SECTION,
HCFA TRANSMITTAL 64**

The facts of your case, the agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: your attorney, agency representatives: Ted Dobek, Joyce Paterson, Thomas Conlon, and the policy unit.

Present at the hearing were your attorney and agency representative Joyce Paterson.

ISSUE: Is the appellant ineligible for Long Term Care/Medicaid (LTC/MA) coverage for a period of 7 months and 1 day due to a transfer of assets?

DHS POLICIES: Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

DISCUSSION OF THE EVIDENCE:

The agency representative testified:

- The agency Chief Casework Supervisor reviewed the total joint resources on November 13, 2014 and at that time it was determined that a check issued on June 13, 2014 for \$22,150.00 was considered to be a transfer.
- The \$22,150.00 was added to the \$36,000.00 that had been paid on the appellant's care contract, and also added were the informal promissory notes of \$3500.00 and \$2368.00. She stated that the total resources transferred was determined to be \$64,018.00.
- The agency received an application for LTC/MA from the appellant on July 23, 2014. The agency notified the appellant by notice dated November 14, 2014 that the appellant was eligible for Medical Assistance effective July 1, 2014.
- The agency sent a separate agency LTC-167 notice also dated November 14, 2014 that states the appellant's July 2014 application for LTC/MA was reviewed and the appellant was found to be ineligible for Long Term Care Medical Assistance.
- The LTC-167 notice states that due to uncompensated transfers totaling \$64,018.00 made on June 30, 2014 and on July 1, 2014 the appellant was ineligible for LTC payments for 7 months and 1 day.
- She stated that the agency determined that a Personal Care Contract dated June 30, 2014 established between the appellant's spouse and his daughter involved an uncompensated transfer of \$22,150.00.
- The agency also determined that the appellant transferred \$36,000.00 to her daughter for caregiver services as indicated in the agency LTC-167 notice.
- The agency determined that payments totaling \$36,000.00 were issued for caregiver services beginning July 1, 2012 through May 6, 2014.
- She stated that the remaining payments as of July 1, 2014 due from two informal loans was determined to be \$2368.00 from one and the remaining payment from the other informal loan was determined to be \$3500.00 as of July 1, 2014. The loans were made to the appellant's son and daughter.
- She submitted copies of the informal loan agreements, the Personal Care Contract and the Statement of Need payment schedule totaling \$36,000.00 from the appellant's application on page 25.

- She stated that the Personal Care Contract was reviewed by the agency LTC Chief Casework Supervisor and the contract was determined to have resulted in an uncompensated transfer of resources.
- The appellant was not eligible for long-term care services, which means the per diem cost at the nursing facility is not covered. The agency determined that the appellant was otherwise eligible for Medical Assistance (MA) coverage effective July 1, 2014.
- The agency divided the total amount transferred by \$9,113.00, which is the current monthly cost of nursing home care in Rhode Island. The agency policy requires that the transfer penalty period be effective as of the first of the month of application i.e. July 1, 2014.
- The applicant would become eligible for LTC payments to the nursing facility at the end of the penalty period.

The appellant's attorney testified:

- He stated that the agency determined the total amount of uncompensated transfers to be \$64,018.00.
- He stated that the agency LTC-167 notice dated November 14, 2014 indicated four different numbers. The notice indicated a transfer of \$3500.00 and another transfer of \$2368.00. He stated that those 2 transfers were from loans that were outstanding.
- He stated that he is not disputing that those two loans were in fact uncompensated transfers. The two loans were outstanding at the time of the application.
- He stated that the appeal is with respect to the \$36,000.00 and \$22,150.00 transfers that were determined to be uncompensated transfers by the agency.
- The \$22,150.00 transfer relates to the Personal Care Contract dated June 30, 2014. The contract is compliant with Medicaid regulations that deal with Personal Care Contracts. Specifically the contract provides for a breakout of the rate of compensation for the \$22,150.00.
- He stated that the contract is based on a computation of the average caregiver hourly rate in the State of Rhode Island that ranges between \$16.00 and \$26.00. This speaks to the reasonableness of the hourly rate of \$19.00 used in the Personal Care Contract.
- He stated that the Personal Care Contract requires the caregiver to maintain a log of the daily services. The \$22,150.00 computation is actuarially sound based upon

what was then Mr. [REDACTED] life expectancy of 4.02 years using the Social Security Administration's Life Expectancy tables.

He stated that had this contract been reviewed from the perspective of legal compliance and regulations that the contract passes muster in terms of the calculation for compensation over the period of life expectancy. Further the contract specifies in detail the scope of the services to be provided.

The contract addresses health and medical care, personal needs, nutritional services, household services, visitation services, socialization services, entertainment services, advocacy services, as well as financial management.

The contract covers the complete gamut for folks who have unfortunately at this point in their lives require an extensive amount of assistance.

He stated that the \$36,000.00 relates to the services provided prior to the execution of the June 30, 2014 Personal Care Contract. The services were not anything new to this caregiver as she had been providing this care for years prior to the Personal Care Contract.

He stated that the caregiver continued to provide services; although Mr. [REDACTED] passed away his spouse was receiving Long Term Care and was receiving other assistance from this caregiver. The caregiver is the appellant's daughter and she has consistently been the caregiver since her parents' first required assistance in 2007.

He stated that the Personal Care Contract is clearly compliant. The contract sets forth the purpose of the agreement, the detailed scope of services, and the manner in which compensation is to be provided.

The contract is consistent with the parameters of lump sum agreements which have been allowed by the agency. In a prior matter under appeal the hearing officer allowed additional information to be submitted subsequent to the hearing.

He stated that with respect to the last entry on the DHS November 14, 2014 notice indicating the amount of \$36,000.00 as a disqualifying transfer. He stated that the Statement of Need application on page 25 listed as numbers 1 through 10 are the disbursements which make up the \$36,000.00.

The \$36,000.00 represents the payment for caregiver services which were rendered from 2012 through May 6, 2014. He submitted documentation in support of the entries on page 25 numbers 1 through 10. Essentially for both the appellant and her spouse, as they lived together until April 2014, spread sheet documentation is provided for each year with total numbers of items such as mileage that was incurred.

- He stated the caregiver services covered started in 2011 through 2014. The services cover mileage, doctor visits, etc. for each parent. Also the corresponding notes that were kept by the caregiver for each parent.
- He also has to submit the ongoing caregiver's logs from June 2014 to December 2014. He stated that the logs and corresponding notes speak to the fact that these were not uncompensated transfers beginning in July 2012 through May of 2014.
- He stated that in this matter a lay person caregiver submitted her best efforts to track the days and times that service were provided and the nature of those services. It is clear from the caregiver notes that the caregiver was not just a taxi but an advocate for her parent's health care during that period.
- He stated that the reason the appellant and her spouse were able to live independently for as long as they did and get through some serious medical conditions through the years was due to the caregiver services.
- He stated that these were not uncompensated transfers, the compensation was well earned and the \$36,000.00 paid over the course of four-plus years is actually de Minimis in terms of the effort the caregiver provided.
- He stated that unfortunately the caregiver as a lay person did not live her life recording every moment of care provided. It becomes difficult in retrospect when they end up in a situation like this to be able to document what was done for a parent on a given month back in 2011 or 2012.
- The caregiver was able to keep a handle on the care provided with record keeping of dates and times of appointments and so forth. Of course what is not reflected in those records is all of the time spent that was not for a specific function such as meal preparation, housekeeping and all of the other aspects of care that are referenced in the Personal Care Contract but are not recorded every day.
- He stated that the caregiver documentation supports the services that were provided over this period of time as earned services. The disbursements that are listed on page 25 of the Statement of Need were not the nature of a gift. They were specifically for the time, effort and care provided by the caregiver so that her parents could live independently.
- He stated that the cost to the appellant and her spouse for the caregiver was vastly less than the cost required had they hired a caregiver agency. He stated that all of the disbursements listed on page 25 were by check to the caregiver.

Findings of fact:

1. The agency notified the appellant by notice dated November 14, 2014 that she was determined to be eligible for Medical Assistance effective July 1, 2014 based on her July 2014 application for Medical Assistance. The notice states that the approval for Medical Assistance does not include Nursing Home payment.
2. The agency sent an agency LTC-167 notice also dated November 14, 2014 notifying the appellant that due to uncompensated transfers totaling \$64,018.00 made on June 30, 2014 and on July 1, 2014 the appellant was not eligible for LTC payments to a nursing facility for 7 months and 1 day.
3. The agency determined that the appellant transferred \$36,000.00 to her daughter on July 1, 2014, and \$22,150.00, \$3500.00, and \$2368.00 on June 30, 2014 resulting in a penalty period being imposed due to the uncompensated nature of the transfers.
4. The agency determined the appellant was not eligible for LTC/Medicaid vendor payments for 7 months and 1 day based on the value of the uncompensated transfers.
5. The appellant's representative submits that the transfers attributed to the appellant were not uncompensated transfers.
6. The representative also submits that the transfer of \$36,000.00 was made to the appellant's daughter to reimburse her as caregiver for the years of assistance that her daughter provided.
7. The representative submits that the \$22,150.00 is a lump sum payment made to the appellant's spouse on June 30, 2014.
8. The appellant's representative testified that he does not dispute that the amounts of \$3500.00 and \$2368.00 were uncompensated transfers attributed to the appellant.
9. This record of hearing was held open through April 3, 2015 to allow the appellant's representative to submit memorandum in support of the appellant's request for LTC/Medical Assistance.
10. This record was remanded to the agency on April 13, 2015 for review of the transfers by the LTC Administrator. The LTC Administrator submitted a response to this record by Memorandum received May 6, 2015.

Issue:

The issue to be decided is whether the agency, in its imposition and calculation of the appellant's transfer penalty, correctly applied agency policy when it determined the appellant would be ineligible for LTC/MA benefits for 7 months and 1 day due to uncompensated transfers totaling \$64,018.00.

There is no dispute between the agency and the appellant as to the month of the appellant's application and as to the months the appellant transferred monies to her daughter (June and July 2014.). The agency made its determination of eligibility based on the application filed July 23, 2014.

Agency Summary:

The agency submitted copies of the appellant's Statement of Need application dated July 23, 2014 indicating that on page 25 of the application the appellant listed, "Caregiver Services Purchased" numbered 1 through 10 indicating a total of \$36,000.00 of services were purchased from July 17, 2012 through May 6, 2014. The list also indicates the transfer of cash in the amount of \$22,150.00 for caregiver services on June 30, 2014. The total of the Caregiver Services Purchased was determined to be \$58,150.00.

The agency also determined that the appellant transferred \$3500.00 and \$2368.00 on June 30, 2014 to repay outstanding loans. The agency also submitted copies of a Personal Care Contract dated June 30, 2014 that is an agreement between the appellant's spouse and her daughter to provide care to him on a regular basis at his home. The contract indicates that the parties agree to lump sum compensation of \$22,150.00 for the services itemized within the contract.

The agency representative stated that the transfers were reviewed by the Chief Casework Supervisor and it was determined that the transfers were uncompensated and subject to the imposition of a period of ineligibility for nursing facility payment. The total of the transfers was determined to be \$64,018.00 and were considered as uncompensated transfers resulting in a period of ineligibility for LTC/MA of 7 months and 1 day. The agency divided the total transferred amount by \$9113.00 to determine the penalty period, which is imposed as of July 1, 2014. (Per agency policy 0384.25.05).

This record of hearing was remanded back to the agency for response from the LTC Administrator and/or the agency legal counsel with a determination regarding the transfers in this matter.

The agency LTC Administrator submitted a memorandum dated April 30, 2015. The memorandum states the following:

"I have reviewed the April 13, 2015 decision, met with DHS legal representatives, reviewed DHS Code of Rules and Regulations, CFR sect. 416.1246 (e), reviewed the exhibits and attorney's memorandum regarding the Docket #14-2954, and would offer the following:

Per Section 0384.15 number 2, I did not see that a binding contract for services existed at the time period where \$36,000.00 was transferred. I did not find clear and convincing evidence that the arrived at figure of \$36,000.00 was for fair market value. No evidence was presented to me to clearly demonstrate that the transfers were not gifts.

The attorneys, or the applicant's daughter, could have presented IRS information that showed that the daughter had received reportable earned income for services rendered during those years. I did not see any such evidence submitted. I did not see any suitable verification made prior to the Personal Care Contract of June 30, 2014 that checks payable to the daughter should be viewed as a compensated transfer for value. Informal caregiver services are often provided by relatives for no financial consideration and since no personal care contract was in existence at the time of those transfers, I am not inclined to view those checks as clearly being made for fair market value.

It should be noted that home health aide service providers must be licensed in the State of Rhode Island for most home and community based programs. Some of the duties reportedly provided in this instance are not permitted by a licensed agent. That is, not allowed to dispense medication. Also, the Genworth Cost of Care Survey would indicate to me that a \$19.00 hourly rate might be a reasonable amount to pay an agency, but the person who delivers that service would receive a lesser hourly rate.

Locally, a homemaker working for an agency would receive about \$11.00 an hour and a home health aide would receive about \$13.00 per hour. The highest figure reported to me ever paid for a home health aide

providing weekend and nightly coverage was \$15.00, per one of our largest billing agencies. Also, these professionals do not bill for mileage and DHS pays for the services delivered, not mileage or travel costs incurred.

As a courtesy, one might stipulate to utilize the highest hourly rate reported to me for a certified nursing assistant. The caregiver provided for services for 38 days from June 30, 2014 and ending on August 6, 2014. This 2.5 hours at \$15.00 = \$37.50 x 38 days = \$1425.00. That amount is what seems to be a possible compensated transfer in this instance.

I requested that DHS legal speak to the contractual law issues raised in the memorandum, such as future payments. DHS legal advised me that in this instance DHS would be amenable to the \$19.00 hourly amount which would total \$1805.00 as a compensated transfer.

However, DHS legal also advised that if a personal service contract is paid by lump sum in advance, the contract should have a provision that provides for the return of monies if the caregiver becomes unable to perform the specified duties, or the person receiving the contracted service passes away before the calculated amount based on life expectancy. (This occurred in this instance.)

Also, no service can be provided at an additional cost if the applicant is under the care of a nursing facility provider, and no other duplication of services should be compensated for as well.

Lastly I have reviewed the Memorandum dated April 3, 2015 which reads in part on page 6, "A lump sum payment for future services between family members can form a valid contract for Medicare eligibility purposes." Our field offices determine eligibility for Medicaid, not Medicare".

Appellant's Summary:

The appellant's representative submits that the transfers made by the appellant have no adverse impact on her application for LTC/MA benefits.

The appellant's daughter received compensation for caregiver services provided from July 2012 through May 2014 by 10 payments totaling \$36,000.00. The appellant's daughter provided care for the appellant and her spouse on a daily basis. The appellant's daughter was paid \$19.00 per hour for her services.

On June 30, 2014 the appellant's daughter received a lump sum payment of \$22,150.00 per a Personal Care Contract agreement made between her and her father for her to provide daily care and to perform personal and financial management tasks while he remained in his home.

The appellant's representative submits that the Personal Care Contract is compliant with Medicaid regulations that deal with Personal Care Contracts. The contract is actuarially sound based upon [REDACTED] life expectancy of 4.02 years. The representative submits that the \$36,000.00 relates to the purchase of services provided prior to the execution of the June 30, 2014 Personal Care Contract. The \$36,000.00 represents payment for caregiver services which were rendered from 2012 through May 6, 2014. The representative submitted documentation that was compiled by the caregiver for the above cited time-frame. The documentation includes services provided for such things as mileage, doctor visits, as well as daily care including meal preparation, housekeeping and all other aspects of daily care.

The appellant's representative submits that the reason the appellant and her spouse were able to live independently for as long as they did was due to the services provided by the caregiver. The \$36,000.00 was not an uncompensated transfer but compensation that was well earned over the course of four-plus years of effort provided by the caregiver. The

caregiver documentation provided to the record supports the services that were provided over this period of time as earned services.

The appellant's representative also submitted a memorandum to this record while the record was held open. The representative's memorandum contains a listing of the caregiver's notes and records compiled by the caregiver that include exhibits documenting mileage, medications, errands, meals, phone, medical appointments, wound care, nutrition plan, and a master calendar compiled by the caregiver.

The memorandum also contains a copy of a listing of the compensation for Caregiver Services Purchased and a copy of the Personal Care Contract dated June 30, 2014. The memorandum also cites and discusses agency policy related to prohibited transfers and argues that the transfers that were prohibited by the agency are not prohibited transfers because the transfer of June 30, 2014 was made pursuant to the terms of a valid service contract, and because the transfers were given in exchange for tangible caregiver services at Fair Market Value.

The memorandum discusses relevant Appeals Court Fair Market Value decisions as well as relevant Medicaid and HCFA Transmittal policies. The memorandum also discusses how fair market value was determined in exchange for services provided by the caregiver.

Conclusion:

The appellant's representative has submitted an accounting of the caregiver's time spent providing care to the appellant from July 2012 through May 2014. The appellant paid the caregiver \$36,000.00 for the care provided on July 1, 2014. However the only documentation provided that there were actually 10 payments made to the caregiver is the hand written entry made on page 25 of the agency Statement of Need application. The appellant's representative did not submit documentation that actual payment was made on the dates indicated on the Statement of Need to the caregiver. The record does not contain evidence such as cancelled checks for payment or bank statements that document withdrawal for the payments on the dates indicated on the Statement of Need.

The appellant's representative submits that the appellant actually received compensation or fair market value for the \$36,000.00 in the form of care, time, and assistance provided by the caregiver over a number of years. Review of DHS policy 0384.15 defines fair market value as, "the amount for which the property (real and personal) can be expected to sell on the open market in the geographic area involved and under existing conditions at the time of the transfer." The appellant's daughter was compensated for the care, time and assistance provided to the appellant by payments totaling \$36,000.00. Agency policy does not provide specific information on how to calculate the value of the type of personal service and assistance provided to the appellant by her daughter.

In this matter the appellant's representative argues that the monetary value of the care provided by the appellant's daughter is equivalent to \$36,000.00. Agency policy requires that the individual provide proof that his/her intention was to receive fair market value or other valuable compensation/consideration for the transferred asset. The issue therefore is whether or not the care provided by the appellant's daughter was equivalent to \$36,000.00 as argued by the appellant's representative.

Agency policy 0384.15 Resource Transfer Definitions, defines compensation/consideration as, "all real and/or personal property (money, food, shelter, services, stocks, bonds, etc.) that is received by an applicant/recipient pursuant to a binding contract in exchange for an asset either prior to, at the time of, or after the transfer". The policy requires that a contract exist that addresses the exchange of assets made between an applicant and some other individual(s), in this matter the appellant's daughter. The record of hearing does not contain evidence indicating that the appellant and her daughter entered into a care contract or that any consideration was given to a contract between the appellant and her daughter for the \$36,000.00 payment. The record does not contain any correspondence between the parties indicating what the payment was for, or for how long the payment was intended to provide reimbursement. The evidence submitted regarding the \$36,000.00 payment does not constitute a binding contract as required by the agency policy.

The appellant's representative submits that the per HCFA Transmittal 64 Section 3258.1.A.1, recognizes that while "a transfer for love and consideration...is not considered a transfer for fair market value," nevertheless, "relatives and family members legitimately can be paid for care they provide to the individual." He also submits that the care provided the appellant by her daughter actually postponed the appellant's admission to a nursing facility.

Review of HCFA Transmittal 64 is considered and the pertinent section is as follows:

A. Definitions—The following definitions apply to transfer of assets.

1. Fair Market Value—Fair market value is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria you use in appraising the value of assets for the purposes of determining Medicaid eligibility.

Note: For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in tangible form with intrinsic value. A transfer for love and consideration, for example, is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual, HCFA presumes that services provided for free at the time were intended to be provided without compensation. Thus a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However an individual can rebut this presumption with tangible evidence that is acceptable to the state. For example, you may require that a payback arrangement had been agreed to in writing at the time services were provided.

2. Valuable Consideration—Valuable consideration means that an individual receives in exchange for his or her right or interest in an asset some act, object, service, or other benefit which has a tangible and/or intrinsic value to the individual that is roughly equivalent to or greater than the value of the transferred asset.

HCFA Transmittal 64, cited in part above, directs a state MA program that a payback arrangement may be required at the time the services were provided. HCFA Transmittal 64 states that services provided for free at the time were intended to be

provided without compensation. Thus a transfer to a relative for care provided for free in the past is a transfer for less than fair market value. In this matter the testimony is that the appellant's daughter provided daily care to the appellant beginning sometime in 2007. The care provided at that time and for some time after was apparently provided for free. The HCFA policy states that a transfer of assets for care provided for free in the past is a transfer for less than fair market value.

Based on the evidence and testimony provided and review of pertinent policy it is determined that the \$36,000.00 transfer was not an exempt transfer made per any binding contract that approximated fair market value.

Regarding the Personal Care Contract that was established between the appellant's spouse and the appellant's daughter on June 30, 2014. The record indicates that the contract was executed effective June 30, 2014. The appellant's spouse deceased August 7, 2014. The caregiver therefore provided care for 38 days to the appellant's spouse. The Personal Care Contract states at section 3.03 c (1) in part, "(1) Personal Care Services

CAREGIVER is being compensated a lump sum of \$22,150.20 for personal care services, computed as the product of the following:

Hourly Rate	\$19.00/hour
x Expected Daily Hours	2.5 hours/day
x Expected Days Per Year	116 days/year
x Life Expectancy	4.02 years
= TOTAL	\$22,150.20

[REDACTED] shall reimburse CAREGIVER for reasonable mileage and travel expenses and any other costs incurred on behalf of [REDACTED] for performing under this agreement."

The Personal Care Contract also states at Section 3.01 Term of Agreement, "The services under this agreement shall be rendered on an ongoing basis over the lifetime of [REDACTED]

The contract does not contain a provision that addresses return of a portion of the lump sum that was paid in advance in the event that either the caregiver or the recipient of the caregiver services either becomes unable to perform the contracted duties or the person receiving the contracted services passes away.


Based on the fact that the recipient of the services identified by the Personal Care Contract deceased August 7, 2014 the actual fair market value of the services provided would total \$1805.00 using the compensation formula contained within the Personal Care Contract.

After a careful review of the agency's policies as well as the evidence and testimony given, the Hearing Officer finds that the appellant's eligibility was denied by the agency based on the value of uncompensated transfers made by the appellant prior to her application for MA/LTC. The result of this appeal is the determination that the agency decision to impose a penalty period due to uncompensated transfers made by the appellant was correct. However subsequent evidence determines that the penalty period should be reduced. The reduction being the compensation cited above provided per the Personal Care Contract to the appellant's daughter.

ACTION FOR THE AGENCY:

The agency is to reduce the 7 month and 1 day transfer penalty by deducting \$1805.00 from the total resource transfer of \$64,018.00 and recalculating the penalty with that balance.

APPEAL RIGHTS (see last page)


Michael Gorman
Hearing Officer

APPENDIX

RESOURCE TRANSFER DEFINITIONS

0384.15

REV: 07/2006

For purposes of evaluating transfers of assets, the following definitions apply:

1. ASSETS

All income and resources of the individual or the individual's spouse that would be countable in the determination of Medical Assistance eligibility for an SSI-related individual; and,

The home (and associated land) of an institutionalized individual.

This includes any income and resources to which the

individual or his/her spouse is entitled but does not

RESOURCE TRANSFER DEFINITIONS

0384.15

receive because of action taken by:

- * the individual or his/her spouse;
- * a person, including a court or administrative body, with legal authority to act in place of the individual or his/her spouse; or
- * any person, including any court or administrative body, acting at the direction or upon the request of the individual or his/her spouse.

2. COMPENSATION/CONSIDERATION

All real and/or personal property (money, food, shelter, services, stocks, bonds, etc.) that is received by an applicant/recipient pursuant to a binding contract in exchange for an asset either prior

to, at the time of, or after the transfer.

3. FAIR MARKET VALUE (FMV)

The amount for which the property (real and personal) can be expected to sell on the open market in the geographic area involved and under existing economic conditions at the time of transfer.

4. INSTITUTIONALIZED INDIVIDUAL

10. PROHIBITED TRANSFER

Transfer of an asset for less than fair market value
by an individual (or spouse if made prior to
establishment of individual's MA/LTC eligibility) which was made
within thirty-six (36) months or sixty (60) months
prior to or anytime after the date the individual was both
institutionalized and applied for MA.

RESOURCE TRANSFER DEFINITIONS

0384.15

11. TRANSFER

The conveyance of right, title, or interest in either
real or personal property from one person to another
by sale, gift, or other process.

The gift or assignment of income from one person to
another. Disposal of a lump sum payment before it can
be counted as a resource can be an example of a
transfer of income.

Transfers made by an individual include transfers made
by:

- * the individual;
- * his/her spouse;
- * any person, including a court or
administrative body, with legal authority to

Calculation of Partial Month Penalty

0384.25.05

This Section, 0384.25.05, is applicable to calculations of penalty periods as of July 1, 2006.

When more than one prohibited transfer occurs during the look back period, the uncompensated values of all prohibited transfers made during the look back period are totaled.

To calculate the penalty period (P) for a prohibited transfer(s), divide the amount of the uncompensated value(s) (UV) of the transfer(s) by the average monthly cost (C) for private payment in a nursing facility. $P+UV/C$

In making these calculations, there is no "rounding down."

Calculation of Partial Month Penalty

0384.25.05

2 OF

In making these calculations, partial month penalties are applied, if appropriate.

When calculating penalty periods, for transfer covered by this section, both the average monthly and daily rate of private nursing facility care will be utilized. The rate is set forth in section 0384.20.

There is no maximum length to the penalty period. However, no penalty is imposed for assets transferred prior to the look back date.

In order to assess a transfer penalty period, the uncompensated transfer amount is divided by the monthly rate, and the remainder is divided by the daily rate. Individuals are responsible for paying the cost of care until their penalty period expires. Medicaid begins paying for long term care expenses on the day the penalty period

Calculation of Partial Month Penalty
0384.25.05
expires.

EXCEPTIONS TO PERIOD OF INELIG 0384.35
REV: 01/2009

A penalty period is not imposed when:

- o The asset was transferred for fair market value;
- o The transferred resource was the individual's HOME and title to the home was transferred to:
 - the individual's spouse;
 - a child of the individual who is under the age of 21, or is blind, or permanently and totally disabled (as evidenced by receipt of SSI or RSDI benefits, or as defined in Section 0352.15);

EXCEPTIONS TO PERIOD OF INELIG 0384.35

- a sibling of the individual who has an equity interest in the home and who resided in the home for at least one year immediately prior to the institutionalization of the individual;
- a son or daughter of the individual who:
 - * was residing in the home for at least two years prior to the parent's institutionalization; and,
 - * can demonstrate that s/he provided care to the parent which prevented the parent from entering an institution for the two year period.

EXCEPTIONS TO PERIOD OF INELIG 0384.35

- o The asset (other than a home, see above) was transferred to:
 - the spouse, or to another for the sole benefit of the spouse, or from the spouse to another for the sole benefit of the spouse;
 - the individual's child who is blind or permanently and totally disabled, or to another for the sole benefit of such child, or to a trust established for the sole benefit of such child;
 - a trust established for the sole benefit of an individual who is under the age of 65 and permanently and totally disabled (as defined

EXCEPTIONS TO PERIOD OF INELIG
in Section 0352.15);

0384.35

- o The individual can prove his/her intention was to receive fair market value or other valuable compensation/consideration;
- o The individual can prove the transfer was exclusively for some purpose other than to qualify for Medical Assistance;
- o Denial of payment for LTC services would work an undue hardship;
- o The asset is returned to the individual.

RESPONSIBILITIES

0384.40

1

REV: 12/2000

Field staff responsibilities pertaining to transfer of assets are the following:

FIRST

The agency representative is responsible to explain the policy on transferred assets and how it may affect eligibility for nursing facility payment, and assist the applicant in determining what documentation is relevant and how such

documentation is generally obtained.

SECOND

Exceptions to the penalty period which involve transfer of an individual's home to his/her spouse, child under 21, or blind
RESPONSIBILITIES 0384.40

or disabled child are referred with relevant documentation to the casework supervisor for review.

All other exceptions should be referred to the Long Term Care Administrator or his designee, who will consult with the Legal Counsel as necessary.

Any and all documents relative to the transferred resource and its fair market value, such as bills of sale, deeds, purchasing agreements, and compensation received must be provided by the applicant as a part of the application process.

HCFA TRANSMITTAL 64

A. Definitions—The following definitions apply to transfer of assets.

1. Fair Market Value—Fair market value is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria you use in appraising the value of assets for the purposes of determining Medicaid eligibility.

Note: For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in tangible form with intrinsic value. A transfer for love and consideration, for example, is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual, HCFA presumes that services provided for free at the time were intended to be provided without compensation. Thus a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However an individual can rebut this presumption with tangible evidence that is acceptable to the state. For example, you may require that a payback arrangement had been agreed to in writing at the time services were provided.

2. Valuable Consideration—Valuable consideration means that an individual receives in exchange for his or her right or interest in an asset some act, object, service, or other benefit which has a tangible and/or intrinsic value to the individual that is roughly equivalent to or greater than the value of the transferred asset.